

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1333 of 1981****For Approval and Signature:****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

SHASHIKANT M PATEL - Appellant(s)**Versus****SPL.LAQ OFFICER - Defendant(s)**

=====

Appearance :

MR PT PATEL for Appellant(s) : 1, NOTICE UNSERVED for Appellant(s) :
1.2.1 NOTICE SERVED for Appellant(s) : 1.2.2 MR ARPIT A KAPADIA for
Appellant(s) : 1.2.2
MR UR BHATT, AGP for Defendant(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**Date : 15/11/2006****ORAL JUDGMENT**

The original claimant of Land Reference Case No. 63 of 1976
has approached this Court to challenge the judgment and award made by the

Ld. Assistant Judge, Vadodara dated 4th November, 1980. By the said judgment the learned Judge has decided and disposed of 18 Land Reference Cases and the present appeal is in respect of one of such Land Reference Cases, namely, L.R. Case No. 63 of 1976.

2. The facts as they emerge from the judgment of the Reference Court can be stated as under :-

2.1. Need to acquire agricultural lands situated at village Harni, near city of Baroda arose for the purpose of construction of by-pass of National Highway No. 8 so that the traffic can travel on National Highway No. 8 without entering the city of Baroda. In view of the same, proceedings under the Land Acquisition Act [hereinafter referred to as 'the Act'] were initiated. Notification under section 4 was published in the Gujarat Government Gazette, Part-I on 18th April, 1972. Thereafter, the declaration under section 6 of the Act was made on 30th November, 1972. Subsequently on 10th May, 1972 the possession of the land in question was taken. Thereafter, necessary requirements were complied with and the Special Land Acquisition Officer i.e., respondent no. 1 made award dated 21st December, 1975. He determined the market value of the land at Rs.13,000/- per hectare.

2.2. Being dissatisfied with the award, the appellant sought reference

under section 18 of the Act, which was duly granted. Along with the appellant, other land owners whose lands were acquired under these notifications, also preferred reference cases. They were consolidated and tried together by the Reference Court. Before the Reference Court, it was submitted that the market value determined by respondent was very low and it did not reflect the correct price of the land prevailing then. It was averred that the rate of compensation was required to be enhanced substantially keeping in view the market value of land of not only Harni village but even the villages in the neighbourhood, whose lands were also acquired for this very purpose. The enhancement of the incidental and statutory benefits was also prayed for. According to the appellant, the compensation ought to have been awarded at the rate of Rs.65,500/- per hectare.

2.3. These reference cases were resisted by the respondent by filing written statement. The parties led evidence documentary as well as oral to substantiate their respective cases. The appellant placed reliance on documentary evidence in the form of sale instances and also judgment and award made by the Civil Court in respect of agricultural lands situated at village Bapod which were acquired in the year 1970 for this very purpose.

2.4. On the basis of the material placed before it, Reference Court arrived at a conclusion that the market value determined by respondent was

very low and the compensation awarded on that basis was inadequate. In the opinion of the Reference Court, the correct market value of the land under acquisition was Rs.33,000/- per hectare. He, therefore, directed the respondent to pay compensation together with solatium as well as other statutory benefits to the appellant on the basis of the enhanced amount. The appellant, however, is not satisfied with the compensation awarded by the Reference Court and hence this appeal.

3. Mr. Arpit Kapadia, learned advocate appearing for the appellant has taken me through the record of this case. He has drawn my attention not only to the relevant portion in the judgment of the Reference Court but also to the oral as well as documentary evidence and in particular the sale instances and judgment of the Civil Court relied on by the claimant. He has submitted that for no valid reasons, the learned Judge has discarded relevant evidence in the form of judgment of the Civil Court in respect of agricultural land at Bapod. He has also submitted that the sale instances that have been produced by the claimant are reliable pieces of evidence and they ought to have been taken into consideration by the learned Judge for awarding just compensation.

3.1. As against that, Mr. Uday Bhatt, Ld. AGP appearing for the respondent has fully supported the judgment of the Reference Court. He has submitted that the Reference Court has for valid reasons not accepted the case

of the appellant wholly and has exercised his discretion on the material produced before him to determine the market value at Rs.33,000/- per hectare. The finding is, therefore, not required to be disturbed. He prays that the appeal be dismissed.

4. There is no dispute that the land belonging to the appellant is agricultural land bearing survey no. 688 A admeasuring hectare 1-08-25. It is also not in dispute that it was acquired for the purpose of construction of by-pass of National Highway No. 8. The appellant has filed this appeal solely on the ground of inadequacy of the compensation awarded to him. Hence, there is no challenge to the acquisition proceedings as such. In view of the same, the only question that is required to be considered by me in this appeal is whether the market value determined by the Reference Court is proper.

4.1. Mr. Kapadia has first drawn my attention to the judgment of the Civil Court. By the said judgment, the Ld. Assistant Judge, Vadodara who decided the case on hand, has also decided Land Reference Case No. 5 of 1977 and its allied matters. These reference cases were filed in connection with land situated at villages Bapod and Sayajipura. They were acquired in pursuance of notification under section 4 published on 25th December, 1970 and 17th January, 1970. They too were acquired for the purpose of construction of by-pass. In the said proceedings the learned Judge made award on 30th August, 1980 and

determined the market value at Rs.90,000/- and Rs.63,000/- per hectare for Bapod and Sayajipura respectively. According to Mr. Kapadia, the award is almost contemporary and these villages are not very far from Harni village and, therefore, the learned Judge ought to have placed reliance on this judgment. So far the judgment rendered in the case of lands at Bapod and Sayajipura is concerned, it is in evidence that Harni and Bapod are situated at some distance. The learned Judge has, therefore, stated that when there is direct evidence available in the form of sale instances in respect of agricultural land situated at village Harni, there was no need to refer to such judgment. The claimants have produced three sale instances of the contemporary period. They are Exhs. 20, 41 and 38. The learned Judge has referred to these sale instances in para. 10 of the judgment. Details have been reproduced in the tabular form. Exh. 20 is in respect of survey no. 462 Paiki and the land admeasures 1 acre. It was sold at Rs.49,998/- per hectare i.e., Rs.19,999/- for one acre. In this case the transaction is dated 28th September, 1970. Document at Exh. 41 is in respect of land bearing survey no. 448/2 admeasuring about 25 Guntha. Here also the market price was determined at Rs.60,000/- per hectare i.e., Rs.24,000/- per acre and compensation of Rs.15,000/- was awarded. The sale instance is dated 18th April, 1970. The third document which has been relied upon by the appellant is in respect of land bearing survey no. 448/A/2/3. In this case the land admeasured 24 Guntha. The market price was determined at Rs.48,000/- per hectare and Rs.19,200/- per acre.. Since the area is 24 Guntha, lumpsum

amount of Rs.12,000/- has been paid by the purchaser. The learned Judge has referred to these sale instances in the judgment in para. 12. He has found that these sale instances are genuine sale transactions and they reflect the correct market value of the lands prevailing at the time of acquisition. However, he has taken into consideration two factors to determine the market value of land in question at a lower rate than the rate at which the aforesaid sales have taken place. The submission of Mr. Kapadia is that the learned Judge ought to have kept in view both the sets of evidence, namely the documents regarding sale and also the judgment of the Civil Court referred to above for arriving at the correct market value. However, as stated above, the learned Judge has not placed any reliance on the judgment. In my opinion, the learned Judge was justified in discarding that piece of evidence since better and more convincing evidence in the form of sale instances was readily available to him since it was produced in the proceedings by the appellant. Even the Apex Court in the decision rendered in the case of Union of India v/s. Pramod Gupta reported in AIR 2005 S.C. p.3708 has observed that Court can take recourse to various methods known for determining the market value. The evidence admissible, therefore, could be judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighbouring villages. Such a judgment and award in absence of any other evidence like deed of sale, report of expert and other relevant evidence would have only evidenciary value. In the instant case, the evidence in the form of deed of sale was very much available to the

Court and that too in respect of the lands situated in Harni itself. The learned Judge was, therefore, not required to place any reliance on the said judgment which pertained to lands of different villages which are quite at a distance from Harni.

4.2. The grievance of Mr. Kapadia is that without any justifying reason, the learned Judge has substantially curtailed the rate of the lands in Harni which has caused grave injustice to the appellant. As already stated in the forgoing paragraphs that documents of three transactions which took place during the period between 10th September, 1970 and 18th April, 1971 have been produced by the appellants. They reflect the market value ranging between Rs.48,000/- and Rs.60,000/- per hectare during this period. The learned Judge has, however, taken the lowest rate of the three i.e., Rs.48,000/- and has deducted 30% from the same to fix the market value of the land in question. That comes to Rs.33,600/-. However, further reduction has been made by the learned Judge and he has concluded that Rs.30,000/- is the correct market value of the land in question at the time of its acquisition. For deduction of 30%, two reasons have been assigned by the learned Judge; the first is that the land forming subject matter of the sale instances referred to above, were situated in the vicinity of the pond and very close to the municipal limits of the City of Baroda. The land under the acquisition is at a distance of about half k.m to one k.m from the lands of the sale instances. To me, it appears that such a drastic

reduction in the rate was not warranted for. Assuming that the land in question was slightly away from the municipal limits of the City of Baroda, nevertheless, it formed part and parcel of the lands at Harni. These are agricultural lands. The area of the lands also did not have any substantial difference. The learned Judge has, however, not assigned any plausible reason to show what factor weighed with him to take the lowest price ignoring the two higher rates, namely Rs.60,000/- per hectare prevailing on 18th April, 1971 and Rs.49,998/- per hectare as prevailing on 10th September, 1970. It may be noted here that so far the first sale instance is concerned, it is dated 10th September, 1970; whereas in the present case, notification under section 4 has been published on 18th April, 1972; meaning thereby that it is later in point of time, almost by one and half year. The second transaction which is dated 18th April, 1971 shows that within 7 to 8 months the price has increased almost by Rs.10,000/- per hectare. The present acquisition is of April 1972. Even after keeping in view the distance between these lands and the land under acquisition, it is not to be forgotten that the acquisition is about one and half year subsequent to the sale instance. Apart from that, the distance between the two lands is not so high so as to require reduction of 30% in the market rate. Keeping in view these two factors, in my opinion, the correct market value can be determined at Rs.45,000/- [Rupees Forty Five Thousand only] per hectare. In view of the same, the award made by the Reference Court is required to be slightly modified and the market value is required to be enhanced from

Rs.33,000/- per hectare to Rs.45,000/- per hectare together with all incidental and statutory benefits including the solatium and interest. In the result, this appeal is partly allowed with no order as to costs.

R & P to be re-transmitted to the concerned Reference Court forthwith.

[Akshay H Mehta, J.]

* Pansala.